

20 CV 5396

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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United States of America and State of New York, ex rel.  
Patrick Donohue,

Plaintiffs,

CASE NO.: 20 – CV -

COMPLAINT

-against-

RICHARD CARRANZA, in his official capacity as  
the Chancellor of New York City Department of  
Education, the NEW YORK CITY DEPARTMENT  
OF EDUCATION, THE CITY OF NEW YORK,  
the NEW YORK STATE SCHOOL DISTRICTS  
(See Appendix A); and COUNTIES OF NEW  
YORK STATE (See Appendix B),

Defendants.  
  
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Patrick Donohue (“Relator Donohue”) brings this *qui tam* action on behalf of the United States of America (“United States”) and the State of New York against Richard Carranza, in his official capacity as the Chancellor of New York City Department of Education (“Chancellor Carranza”), the New York City Department of Education (“NYC DOE”), the City of New York (“NYC”), the New York State School Districts (“NYS Schools”, See Appendix A); and the Counties of New York State (“NYS Counties”, See Appendix B) under the federal False Claims Act, 31 U.S.C. § 3729-3733, (“FCA”) and the New York False Claims Act, New York Finance Law §§ 187-194, and alleges upon his first-hand knowledge as follows:

INTRODUCTION

1. The case is about the efforts of Chancellor Carranza, NYC DOE, NYC, NYS Schools and NYS Counties (collectively, “Defendants”) to extract from the United States and the State of New York (the “Government”) hundreds of millions of dollars in payments by knowingly presented, or caused to be presented, false or fraudulent claims for

payment or approval; knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim; knowingly made, or used, a false record or statement material to a false or fraudulent claim; knowingly made, used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the Government; and conspired to commit the above acts, all in violation of 31 U.S.C. § 3729(a)(1)(A),(B),(C) & (G).

2. The Individuals with Disabilities Education Act, 20 U.S.C. §1400 (“IDEA”)<sup>1</sup>, the regulations of the United States Department of Education, which were promulgated pursuant to authority granted by the statute (34 C.F.R. Part 300), and the corresponding regulations of the Commissioner of Education in New York (Part 200 Students with Disabilities and Part 201 Procedural Safeguards for Students with Disabilities)<sup>2</sup>, pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law in New York State guarantees students with disabilities a free and appropriate public education (“FAPE”). The term FAPE<sup>3</sup> refers to special education and related services that are designed to meet a child’s unique needs and that will prepare the child for further education, employment, and independent living.
3. The Defendants’ scheme involves frauds against the federal government and the State of New York. First, the Defendants’ fraudulently created Individualized Education Plans (“IEPs”) for special education students knowing they could not implement these IEPs knowingly denying the students a FAPE. Second, the Defendants’ fraudulently claimed they were providing special education and related services as outlined in the students’ IEPs and billed and/or reimbursed by the federal government and New York State for services that were not performed or were established fraudulently.
4. As a result of Defendants’ multi-faceted campaign of fraud against the Government,

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<sup>1</sup> <https://sites.ed.gov/idea/>

<sup>2</sup> <http://www.p12.nysed.gov/specialed/lawsregs/documents/regulations-part-200-201-oct-2016.pdf>

<sup>3</sup> IDEA Section 602 (9) The term ‘free appropriate public education’ means special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 614(d).



Defendants have collected hundreds of millions of dollars, if not billions of dollars, which they were never entitled.

5. But beyond this massive financial fraud on the government, the ultimate victims here are hundreds of thousands of students with disabilities and their parents who were relying on the Defendants to provide the services they were obligated to provide through IDEA.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction of this matter pursuant to 28 U.S.C. § 3730(a) (False Claims Act), 28 U.S.C. § 1331 (Federal question), 28 U.S.C. § 1367 (Supplemental jurisdiction), 31 U.S.C. § 3732 (False claims jurisdiction), and 28 U.S.C. § 1345 (United States as plaintiff).
7. To the extent, if any, that this case involves questions of special education rights under New York State law, this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.
8. Pursuant to 31 U.S.C. §3732(a) and 28 U.S.C. §1391(b), venue is properly placed within the Southern District of New York because at least one of the Defendants resides or transacts business in the Southern District, specifically, Richard Carranza (“Chancellor Carranza”), in his official capacity as Chancellor of the New York City Department of Education, City of New York, and the New York City Department of Education (“NYC DOE”), maintain business offices in New York County, and all Defendants reside in New York. In addition, Realtor Donohue is a resident of New York County.
9. Plaintiffs are entitled to costs and attorneys’ fees under 31 U.S.C. §3730(d), if determined to be a prevailing party.

### **FACTUAL** **ALLEGATIONS**

10. As the parent of a special education student, the NYC DOE Committee on Special

Education (“CSE”) fraudulently created an IEP for my daughter they knew they could not implement during the Covid-19 situation. However, they proceeded to finalize and fraudulently present it as a FAPE. There are dozens of other parents and students I have firsthand knowledge of NYC DOE fraudulently doing the same thing.

11. There are over 50 students I have firsthand knowledge of who NYC DOE failed to provide the services outlined in their IEP since March 2020 (including live synchronous services), however, fraudulently projected (to the Government) these students were continuing to be properly serviced remotely. In addition, the NYC DOE CSE fraudulently created IEPs for the 2020-2021 school year for these students they knew they could not implement during the Covid-19 situation.
12. There are more than a dozen additional students I have firsthand knowledge of who their Local Educational Agencies (“LEAs”) in New York State failed to provide services outlined in their IEP since March 2020 (including live synchronous services), however, fraudulently projected (to the Government) these students were continuing to be properly serviced remotely. In addition, these LEAs fraudulently created IEPs for the 2020-2021 school year for these students they knew they could not implement during the Covid-19 situation. These LEAs include the following: Oxford Academy School District in Broome County, Glen Cove School District in Nassau County, Massena Central School District in St. Lawrence County, New Rochelle City School District in Westchester County, Babylon Union Free School District in Suffolk County, Williamsville Central School District in Erie County, Goshen Central School District in Orange County, Bay Shore Union Free School District in Suffolk County, Valley Stream Union Free School District in Nassau County, Salem Central School District in Westchester County, Seaford Union Free School District in Nassau County, Eastchester Union Free School District in Westchester County, Smithtown Central School District in Suffolk County, North Colonie Central School District in Albany County, and Penfield Central School District in Monroe County. It is my belief and understanding these fraudulent practices have occurred throughout New York State school districts.

**IDEA PART B Funding**



13. The purpose of IDEA Part B (20 USCS § 1415) grants is to assist States, outlying areas, freely associated States, and the Secretary of the Interior to provide special education and related services to children with disabilities, including that children with disabilities have access to a free appropriate public education (“FAPE”). In general, IDEA Part B funds *must be used only to pay the excess costs of providing FAPE to children with disabilities*, such as costs for special education teachers and administrators; related services providers (speech therapists, psychologists, etc.); materials and supplies for use with children with disabilities; professional development for special education personnel; professional development for regular education teachers who teach children with disabilities; and specialized equipment or devices to assist children with disabilities. Generally, IDEA funds cannot be used for core instruction in the general education classroom, instructional materials for use with non-disabled children, or for professional development of general education teachers not related to meeting the needs of students with disabilities. Two exceptions to these guidelines are when IDEA Part B funds are used for coordinated early intervening services<sup>4</sup> (“CEIS”) or are consolidated in a Title I schoolwide school (under The Elementary and Secondary Education Act “ESEA”, Pub.L.89–10).
14. LEAs may use up to 15 percent of their IDEA Part B funds for CEIS to assist students in grades K through 12 (with an emphasis on K through 3) who are not currently identified as needing special education and related services but who need additional academic and behavioral support to succeed in a general education environment.<sup>5</sup> CEIS funds can be used to provide professional development<sup>6</sup> to educators who are responsible for helping children who need additional academic and behavioral support succeed in a general education environment or to provide direct interventions to children who need academic and behavioral support. CEIS funds may be used in coordination with ESEA funds but *must supplement, and not supplant*, ESEA funds for those activities.<sup>7</sup>

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<sup>4</sup> Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, § 618(d)(2)(B); Note: The calculation for the maximum CEIS funds is based on the total of the regular IDEA, Part B allocations

<sup>5</sup> IDEA Section 613(f).

<sup>6</sup> IDEA Section 613(f)(2)(A)

<sup>7</sup> IDEA Section 613(f)(5).

15. A Title I schoolwide school may use, to carry out the schoolwide project, an amount of IDEA funds that is the same proportion of the total cost of the project as the number of children with disabilities benefiting from the program is to the total school population participating in the program. In a Title I schoolwide school that consolidates Federal funds (e.g., ESEA, IDEA, etc.), a school may use those funds for any activity in its schoolwide plan without accounting separately for the funds.<sup>8</sup> The schoolwide school needs to ensure that children with disabilities continue to receive FAPE, but would not need to show that IDEA funds were spent only on allowable special education and related services expenditures.<sup>9</sup>

### **MEDICAID Funding**

16. A public school must offer all children a FAPE regardless whether or not it receives federal funds under IDEA. Many IDEA-eligible children are covered by the Medicaid program, a federal program managed through the Centers for Medicare & Medicaid Services (“CMS”), whose Early and Periodic Screening, Diagnosis and Treatment mandate requires Medicaid agencies to provide eligible children under 21 years old with the services necessary to meet their medical needs. In many cases, a Medicaid-eligible child’s IEP under IDEA includes health-related services such as audiology, nursing and therapies that are medical in nature and covered by Medicaid.<sup>10</sup>
17. In 1988, federal law was amended, through the passage of the Medicare Catastrophic Coverage Act of 1988, to allow Medicaid payment for services provided to children under IDEA. Recognizing that schools provide medically necessary services and IDEA funding typically covers less than 20 percent of the average per student costs for special education, the US Congress amended federal law in 1988 expressly to forbid Medicaid from restricting or prohibiting payment for covered services authorized in a child’s

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<sup>8</sup> ESEA Section 1114.

<sup>9</sup> IDEA Section 613(a)(2)(D)

<sup>10</sup> In the late 1980s courts agreed that inclusion in an IEP did not automatically establish a service as educational rather than medical in nature. See *Commonwealth of Massachusetts v Heckler*, 616F. Supp. 687 (D. Mass. 1985), *Commonwealth of Massachusetts v Bowen*, 816F.2d 796 (1st Cir. 1987), and *Bowen v Massachusetts*, 487 U.S. 879, 108 S.Ct 2722 (1988).



IEP.<sup>11</sup> This amendment was enacted to require Medicaid to be primary to the Department of Education for payment of the health-related services provided under IDEA and the school districts must follow strict reporting requirements to secure this federal funding.<sup>12</sup> Even prior to the amendment in 1988, the school districts had strict reporting requirements.<sup>13</sup>

18. There are six conditions that must be met for Medicaid to reimburse for IDEA-related services: 1) The child receiving the service must be enrolled in Medicaid; 2) The services are medically necessary; 3) The services must be covered in the state Medicaid plan or authorized by the federal Medicaid statute; 4) The services must be listed in the child's individualized education program ("IEP"); 5) The school district or local educational agency ("LEA") must be authorized by the state as a qualified Medicaid provider; and 6) The LEA or school district must follow state guidance as to how claims are to be submitted for reimbursement. School districts and providers are instructed to maintain proper documentation and follow the reporting requirements to avoid fraud.<sup>14</sup>
19. Various improper billing by states and school districts have occurred through Medicaid throughout the decades since the law was changed in 1988 and CMS has increased its oversight and regulations for school districts to continue to receive these federal dollars<sup>15</sup> and specifically in New York State.<sup>16</sup> A whistleblower filed a federal lawsuit in 1998 and the federal audit found the program to be out of compliance with federal guidelines and that New York State school districts did not maintain adequate documentation to support Medicaid billing. The lawsuit was settled for \$540 million in or about 2009, and a new state plan amendment was approved in April 2010. The biggest difference between the old claiming methodology and the new methodology is the old methodology was based on a minimum number of services per month *while the*

<sup>11</sup> Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 - P.L. 100-360.

<sup>12</sup> CMS Medicaid School-based Administrative Claiming Guide (May 2003): <https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MedicaidBudgetExpendSystem/Downloads/Schoolhealthsvcs.pdf>

<sup>13</sup> CMS Medicaid and School Health: A Technical Assistance Guide (August 1997): <http://paradigm-healthcare.com/news/medicaid-and-school-health-a-technical-assistance-guide/>

<sup>14</sup> How to Obtain Medicaid Funding for School-Based Services: A Guide for Schools in System of Care Communities: <http://www.rippleeffects.com/pdfs/MedicaidFunding.pdf>

<sup>15</sup> <https://www.cms.gov/newsroom/fact-sheets/hhs-issues-final-rules-protect-medicaid-improper-payments-school-based-claiming>

<sup>16</sup> <https://oig.hhs.gov/oas/reports/region2/20301008.pdf>



*new methodology requires the school districts to PROVE a session occurred in order to bill.*<sup>17</sup> The School Supportive Health Services Program (“SSHSP”) and the Preschool

Supportive Health Services Program (“PSHSP”) were developed jointly by the New York State Education Department (“NYS SED”) and the New York State Department of Health (“NYS DOH”). SSHSP applies to the 5-21 year old population and PSHSP applies to the preschool 3-4 year population pursuant to §4410 of the Education Law. SSHSP and PSHSP were established to assist school districts and counties in obtaining Medicaid Reimbursement for certain diagnostic and health support services provided to students with disabilities.<sup>18</sup> SSHSP and PSHSP created a handbook in 2014, to provide specific guidelines for LEAs to follow in order to receive Medicaid funding.<sup>19</sup> NYC DOE has an entire department within its bureaucracy to maximize its Medicaid funding.<sup>20</sup>

20. SSHSP provided specific guidance to all service providers about proper and improper Medicaid billing during the Covid-19 situation in a June 5, 2020, memorandum. In the memorandum SSHSP specifically stated, "There must be live interaction between the therapist and the student or Medicaid cannot be billed. There is no Medicaid reimbursement for videos, material packets, activities that are not completed during a live interaction between the therapist and the student."; "No, text messaging and email contact with students or parents will not be reimbursable by SSHSP Medicaid."; "No, sending activities for a student to complete will not be reimbursable by SSHSP Medicaid."; "No, providing consultation to parents is not a reimbursable SSHSP service."; and "No, asynchronous "store and forward" services are not reimbursable by Medicaid under the SSHSP."<sup>21</sup>
21. The United Federation of Teachers (“UFT”) is the sole bargaining agent for most of the non-supervisory educators who work in the New York City public schools. UFT represents approximately 75,000 teachers, 19,000 classroom paraprofessionals, along with related service providers, such as occupational therapists, physical therapists and

<sup>17</sup> <https://www.uft.org/files/attachments/medicaid-speech.pdf>

<sup>18</sup> <http://www.oms.nysed.gov/medicaid/>

<sup>19</sup> [http://www.oms.nysed.gov/medicaid/handbook/sshsp\\_handbook\\_8\\_nov\\_25\\_14.pdf](http://www.oms.nysed.gov/medicaid/handbook/sshsp_handbook_8_nov_25_14.pdf)

<sup>20</sup> <https://infohub.nyced.org/working-with-the-doe/special-education-providers/medicaid#jump-to-heading-21>

<sup>21</sup> [http://www.oms.nysed.gov/medicaid/medicaid\\_alerts/alerts\\_2020/20\\_02\\_Addendum.html](http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2020/20_02_Addendum.html)



speech therapists.<sup>22</sup> Despite the clear guidance from the New York State Education Department and the New York State Health Department about providing live, synchronous instruction, UFT advised its members, "...synchronous instruction *is not required* at this time."<sup>23</sup> (emphasis added)

22. CMS tracks state expenditures through the automated Medicaid Budget and Expenditure System/State Children's Health Insurance Budget and Expenditure System ("MBES/CBES"). The MBES/CBES is a web-based application system that has been implemented nationwide. The system allows states to report budgeted and actual expenditures for Medicaid and the Children's Health Insurance Program ("CHIP"), by electronically submitting their Form CMS-64 directly to the CMS Data Center and the Medicaid database. The amounts reported and any attachments must be actual expenditures for which all supporting documentation, in readily reviewable form, has been compiled and is available immediately at the time the claim is filed. Form CMS-64 is a statement of expenditures for which States are entitled to Federal reimbursement under Title XIX and which reconciles the monetary advance made on the basis of Form CMS-37 filed previously for the same quarter. Consequently, the amount claimed on the Form CMS-64 is a summary of expenditures derived from source documents such as invoices, cost reports and eligibility records. All summary statements or descriptions of each claim must identify the claim and source documentation. Claims developed through the use of sampling, projections, or other estimating techniques are considered estimates and are not allowable under any circumstances. Where states are unable to develop and document a claim for expenditures on a current basis, they must withhold it until the actual amount, supported by final documentation, has been determined. The state must report that amount on a future Form CMS-64 as a prior period adjustment.<sup>24</sup>
23. Medicaid spending on school-based health accounts for about \$4.5 billion<sup>25</sup> of the of the entire Medicaid budget of approximately \$400 billion.<sup>26</sup> The 2019 IDEA funding

<sup>22</sup> <https://www.uft.org/your-union/about-uft>

<sup>23</sup> <https://www.uft.org/your-rights/safety-health/coronavirus/guidance-on-remote-learning>

<sup>24</sup> <https://www.medicaid.gov/medicaid/financial-management/state-expenditure-reporting-medicaid-chip/index.html>

<sup>25</sup> <https://www.medicaid.gov/medicaid/financial-management/state-expenditure-reporting-for-medicaid-chip/expenditure-reports-mbescbes/index.html>

<sup>26</sup> Congress of the United States Congressional Budget Office. (2019.) The Budget and Economic Outlook 2019 – 2029. Retrieved from: <https://www.cbo.gov/system/files?file=2019-01/54918-Outlook.pdf>



is approximately \$13.5 billion.<sup>27</sup> In New York State the amount of Medicaid spending in the schools was \$273,563,018, and \$136,781,511 of that came from federal funds.<sup>28</sup>

### **TYPES OF FRAUD ALLEGED**

24. The FCA subjects those who receive federal funds fraudulently to civil liability.<sup>29</sup> The United States Justice Department rely on the provision to curb the abuse of federal funds in programs ranging from Medicaid to disaster assistance.<sup>30</sup>

### **FALSE CERTIFICATION FRAUD**

25. The Defendants submitted a “false claim” when its representatives submitted fraudulent representations that A) the IEPs they created were knowingly not in compliance with IDEA and they could not implement these IEPs, thereby denying the students a FAPE, and B) when their service providers knowingly misrepresented they were providing related services in accordance with IDEA and Medicaid regulations. These claims were legally false, since the provider knew it was in violation of federal regulations at the time of submission.<sup>31</sup> The federal and state governments only disbursed the money

<sup>27</sup> United State Department of Education. (2018.) Department of Education Fiscal Year 2019 Congressional Action. Retrieved from: <https://www2.ed.gov/about/overview/budget/budget19/19action.pdf>

<sup>28</sup> <https://www.cbpp.org/research/health/medicaid-helps-schools-help-children>

<sup>29</sup> See 31 U.S.C. § 3729(a) (2012). Originally enacted during the Civil War, the Act served as the first widespread check on military contractors who defrauded the Union army. See Christopher L. Martin, Jr., Comment, *Reining in Lincoln's Law: A Call to Limit the Implied Certification Theory of Liability Under the False Claims Act*, 101 Calif. L. Rev. 227, 236 (2013). As the federal bureaucracy grew in the twentieth century, the scope and impact of the FCA grew as well. See *id.* at 229.

<sup>30</sup> See Press Release, U.S. Dep't of Justice, Justice Department Recovers Over \$4.7 Billion from False Claims Act Cases in Fiscal Year 2016 (Dec. 14, 2016), <https://www.justice.gov/opa/pr/justice-department-recovers-over-47-billion-false-claims-act-cases-fiscal-year-2016> [<https://perma.cc/PEJ3-NW4B>] (“The False Claims Act is the government’s primary civil remedy to redress false claims for government funds and property under government programs and contracts relating to such varied areas as health care, defense and national security, food safety and inspection, federally insured loans and mortgages, highway funds, small business contracts, agricultural subsidies, disaster assistance, and import tariffs.”).

<sup>31</sup> Keith D. Barber et al., *Prolific Plaintiffs or Rabid Relators: Recent Developments in False Claims Act Litigation*, 1 Ind. Health L. Rev. 131, 137 (2004). Occasionally, courts will apply a limited version of this theory, “finding it applicable only ‘when certification is a prerequisite to obtaining a government benefit.’ ” *Id.* (quoting *United States ex rel. Hopper v. Anton*, 91 F.3d 1261, 1266 (9th Cir. 1996)). For example, in *United States ex rel. Hopper v. Anton*, the Ninth Circuit concluded that under the FCA “the false certification of compliance . . . creates liability when certification is a prerequisite to obtaining a government benefit.” 91 F.3d 1261, 1266 (9th Cir. 1996); see also *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 902 (5th Cir. 1997) (“[W]here



because the Defendants certified that they would comply with the relevant federal regulations. In other words, the Defendants lied when it took federal funds while simultaneously—and knowingly—breaking federal regulations. Specifically in *Hopper*, the Court stated, "It requires a false claim. Thus, some request for payment containing falsities made with scienter (i.e., with knowledge of the falsity and with intent to deceive) must exist."

### IMPLIED CERTIFICATION FRAUD

26. In some instances, the Defendants' representative may not have actually signed a form certifying compliance yet would still violate the FCA.<sup>32</sup> By the provider submitting the claim, it is implied the provider affirmed it was in compliance with the regulations, since violating those regulations would have made it ineligible to receive the funding. Put another way, the fact the provider submitted any claim at all when it knew or should have known it was ineligible to receive funds because of a violation is what makes the claim legally "false."
27. The Sixth Circuit found a holding company for home health-care agencies liable under the FCA for implicitly certifying compliance. The holding company submitted a claim for reimbursements for payments made to its employee-benefits plan, even though those benefits were paid back to the provider the next day. The court concluded that the provider's signed statement accompanying its cost reports, which said that the reports

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the government has conditioned payment of a claim upon a claimant's certification of compliance with, for example, a statute or regulation, a claimant submits a false or fraudulent claim when he or she falsely certifies compliance with that statute or regulation.")

<sup>32</sup> See Barber et al., *supra* note 57, at 137; see, e.g., *Universal Health Servs., Inc. v. United States*, 136 S. Ct. 1989, 1995 (2016) ("We first hold that, at least in certain circumstances, the implied false certification theory can be a basis for liability."); *United States ex rel. Augustine v. Century Health Servs., Inc.*, 289 F.3d 409, 416 (6th Cir. 2002) (stating that FCA claims brought under an implied certification theory can proceed as long as "the contractor knew, or recklessly disregarded a risk, that its implied certification of compliance was false" (quoting *Shaw v. AAA Eng'g & Drafting, Inc.*, 213 F.3d 519, 533 (10th Cir. 2000))); *Mikes v. Straus*, 274 F.3d 687, 700 (2d Cir. 2001) ("[W]e think a medical provider should be found to have implicitly certified compliance with a particular rule as a condition of reimbursement in limited circumstances."); *Shaw v. AAA Eng'g & Drafting, Inc.*, 213 F.3d 519, 531 (10th Cir. 2000) ("[T]he language and structure of the FCA itself supports the conclusion that, under 31 U.S.C. § 3729(a)(1), a false implied certification may constitute a 'false or fraudulent claim.'"); *AbTech Constr., Inc. v. United States*, 31 Fed. Cl. 429, 434 (1994) (finding the defendant liable under an implied certification theory).



were “true, correct, and complete” to the best of the signer’s knowledge, was enough for the provider to be liable under the FCA. The court concluded that the company was liable even though the provider did not explicitly state that, when it signed the statement, it would not transfer the specific funds.<sup>33</sup> The Supreme Court recently endorsed the Implied Certification Fraud theory in *Universal Health Services, Inc. v. United States*.<sup>34</sup>

28. In this context, the relevant regulations include keeping accurate attendance and providing special education services to all students.<sup>35</sup> Thus, the Defendants who did not keep close track of log-ins and attendance data would be liable since school officials implicitly certified that they would keep their data current when they made the claim for public funds.

#### WORTHLESS SERVICES FRAUD

29. Under the Worthless Services Fraud understanding of false claiming, the Defendants are liable since the limited services they may have provided was so subpar as to be completely worthless.<sup>36</sup> By claiming reimbursement for providing valueless care, the provider effectively has forced the government to pay for nothing—making it so the provider submits a legally false claim when it asks the government to reimburse it for services that have no value.<sup>37</sup> These deceptive practices are a prima facie case of

<sup>33</sup> *Augustine*, 289 F.3d at 416

<sup>34</sup> 136 S. Ct. 1989 (2016).

<sup>35</sup> See, e.g., Clare McCann, IDEA Funding, EdCentral: Edcyclopedia, <http://www.edcentral.org/edcyclopedia/individuals-with-disabilities-education-act-funding-distribution/> [<https://perma.cc/YJ2U-AL4U>] (discussing the requirement to provide services to students with special needs); see also Office of Elementary & Secondary Educ., U.S. Dep’t of Educ., Non-Regulatory Guidance: Local Educational Agency Identification and Selection of School Attendance Areas and School and Allocation of Title I Funds to Those Areas and Schools (2003), <https://www2.ed.gov/programs/titleiparta/wdag.doc> [<https://perma.cc/N4KV-N3W6>] (discussing the requirements for schools to receive Title I funds).

<sup>36</sup> Isaac D. Buck, *Caring Too Much: Misapplying the False Claims Act to Target Overtreatment*, 74 Ohio St. L.J. 463, 487–88 (2013); see, e.g., *United States ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1053 (9th Cir. 2001) (“In an appropriate case, knowingly billing for worthless services or recklessly doing so with deliberate ignorance may be actionable under § 3729, regardless of any false certification conduct.”); *Mikes v. Straus*, 274 F.3d 687, 703 (2d Cir. 2001) (“We agree that a worthless services claim is a distinct claim under the Act. It is effectively derivative of an allegation that a claim is factually false because it seeks reimbursement for a service not provided.”).

<sup>37</sup> Buck, *supra* note 73, at 487–88. This theory emerged after the U.S. Attorney’s Office for the Eastern District of Pennsylvania successfully prosecuted a long-term care facility after one of its patients was sent to the emergency room



fraudulent behavior. If a provider's services are so bad that they in effect have no value, the provider might as well be selling snake oil. The Defendants knew the services they were claiming to provide were sub-par, if not worthless.<sup>38</sup>

30. In *United States ex rel. Lee v. SmithKline Beecham, Inc.*, the Ninth Circuit upheld the concept of a Worthless Services Fraud theory by stating it was possible for plaintiffs to state a claim for worthless services fraud.<sup>39</sup> There, a laboratory billed Medicare for tests it had completed using control samples that it knew fell outside of the acceptable standard of error.<sup>40</sup> Likewise, defendants in a Virginia FCA case settled after the plaintiffs alleged worthless services fraud where the defendant nursing home had claimed Medicare benefits while neglecting patients.<sup>41</sup>

### FIRST CLAIM

Violations of the False Claims Act

(31 U.S.C. § 3729(a)(1)(A))

Presenting False Claims for Payment

31. The United States and Relator Donohue incorporate by reference the above paragraphs as if fully set forth herein.

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and found to be suffering from “26 ulcers, a gangrenous leg and a series of other serious complications.” *Id.* (quoting Devin S. Schindler, *Pay for Performance, Quality of Care and the Revitalization of the False Claims Act*, 19 *Health Matrix* 387, 396–97 (2009)).

<sup>38</sup> *Cf.* Ctr. for Research on Educ. Outcomes, Stanford Univ., *Online Charter School Study* 23 (2015), <https://credo.stanford.edu/pdfs/Online%20Charter%20Study%20Final.pdf> [<https://perma.cc/74M4-N5SA>] (finding that students in online charter schools lagged behind their peers in traditional schools in terms of academic achievement). In one Stanford University study, researchers found that students in online charter schools made academic gains in math that translated to the gains that the researchers would have expected to see if they had spent 180 fewer days—or an entire academic year—learning than their peers in a brick-and-mortar classroom. *Id.* Likewise, online charter school students’ reading gains put them 72 school days behind their peers in traditional schools. *Id.*

<sup>39</sup> 245 F.3d at 1053.

<sup>40</sup> *Id.* at 1050

<sup>41</sup> Compare David R. Hoffman, *The Role of the Federal Government in Ensuring Quality of Care in Long-Term Care Facilities*, 6 *Annals Health L.* 147, 148 (1997), with Michael J. Davidson, *Governmental Responses to Elder Abuse and Neglect in Nursing Homes: The Criminal Justice System and the Civil False Claims Act*, 12 *Elder L.J.* 327, 344 (2004), for a discussion of *United States v. GMS Management-Tucker, Inc.*, a case that settled after federal prosecutors brought a suit against a Virginia nursing home that claimed Medicaid benefits while failing to provide adequate care, including allowing one patient to develop twenty-six bedsores, one of which was as large as a grapefruit.

32. The United States seeks relief against Defendants under Section 3729(a)(1)(A) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A).
33. As set forth above, Defendants knowingly presented, or caused to be presented, false and fraudulent claims for payment or approval in connect with the submission of claim for school-based services for students with disabilities.
34. Medicaid and Department of Education paid school districts, counties or municipalities New York State and Federal funds because of Defendants' fraudulent conduct.
35. By reason of Defendants' false claims, New York State and the United States have been damaged in a substantial amount to be determined at trial.

**SECOND CLAIM**

Violations of the False Claims Act

(31 U.S.C. § 3729(a)(1)(B))

Use of False Statements

36. The United States and Relator Donohue incorporate by reference the above paragraphs as if fully set forth herein.
37. The United States seeks relief against Defendants under Section 3729(a)(1)(B) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(B).
38. As set forth above, Defendants knowingly made, used, or caused to be made and used, false records and statements material to a false or fraudulent claim paid or approved in connect with the submission of claim for school-based services for students with disabilities.
39. Medicaid and Department of Education paid school districts, counties or municipalities New York State and Federal funds because of Defendants' fraudulent conduct.



40. By reason of Defendants' false claims, New York State and the United States have been damaged in a substantial amount to be determined at trial.

**THIRD CLAIM**

Violations of the False Claims Act

(31 U.S.C. § 3729(a)(1)(G))

Use of False Statements

41. The United States and Relator Donohue incorporate by reference the above paragraphs as if fully set forth herein.
42. The United States seeks relief against Defendants under Section 3729(a)(1)(G) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(G).
43. As set forth above, Defendants knowingly made, used, or caused to be made and used, false records and statements material to an obligation to pay or transmit money or property to the Government or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the Government.
44. Medicaid and Department of Education paid school districts, counties or municipalities New York State and Federal funds because of Defendants' fraudulent conduct.
45. By reason of Defendants' false claims, New York State and the United States have been damaged in a substantial amount to be determined at trial.

**FOURTH CLAIM**

Violations of the False Claims Act

(31 U.S.C. § 3729(a)(1)(C))

Conspiracy to Commit a Violation of the False Claims Act

46. The United States and Relator Donohue incorporate by reference the above paragraphs as if fully set forth herein.
47. The United States seeks relief against Defendants under Section 3729(a)(1)(C) of the False Claims Act, 31 U.S.C. § 3729(a)(1)(C).
48. As set forth above, Defendants conspired to commit a violation of subparagraph (A), (B) and (G) of the False Claims Act.
49. Defendants have committed at least one overt act in furtherance of their conspiracy.
50. By reason of Defendants' conspiracy, New York State and the United States have been damaged in a substantial amount to be determined at trial.

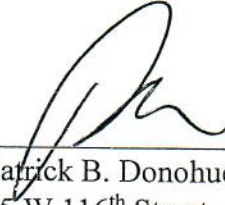
WHEREFORE, Plaintiff the United States ex rel. Patrick Donohue respectfully request that judgment be entered in their favor and against Defendants as follows:

- a. On the First, Second, Third and Fourth Claims for Relief (Violations of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A), (B), (C) and (G), for treble the United States' damages, in an amount to be determined at trial, and an \$11,000 penalty for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants; and
- b. Awarding Patrick Donohue his relator's share pursuant to 31 U.S.C. § 3730(d)(1) or (2); and
- c. On the First, Second, Third and Fourth Claims for Relief, an award of costs and attorney's fees pursuant to 31 U.S.C. § 3730(d); and
- d. Awarding such other and further relief as this Court deems just and proper.



Dated: July 13, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'P. Donohue', written over a horizontal line.

Patrick B. Donohue, Esq.  
55 W 116<sup>th</sup> Street – Suite 159  
New York, NY 10026  
(917) 359-4556

TO:

United States Attorney  
for the Southern District of New York  
86 Chambers Street – 3<sup>rd</sup> Floor  
New York, N.Y. 10007

Attorney General  
Civil Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

**APPENDIX A**  
**SCHOOL DISTRICTS OF NEW YORK STATE**

Addison Central School District	Beaver River Central School District
Adirondack Central School District	Bedford Central School District
Afton Central School District	Beekmantown Central School District
Akron Central School District	Belfast Central School District
Albany City School District (not BOCES)	Belleville-Henderson Central School District
Albany-Schoharie-Schenectady-Saratoga BOCES	Bellmore Union Free School District
Albion Central School District	Bellmore-Merrick Central High School District
Alden Central School District	Bemus Point Central School District
Alexander Central School District	Berkshire Union Free School District
Alexandria Central School District	Berlin Central School District
Alfred-Almond Central School District	Berne-Knox-Westerlo Central School District
Allegany-Limestone Central School District	Bethlehem Central School District
Altmar-Parish-Williamstown Central School District	Bethpage Union Free School District
Amagansett Union Free School District	Binghamton City School District
Amherst Central School District	Blind Brook-Rye Union Free School District
Amityville Union Free School District	Bolivar-Richburg Central School District
Amsterdam City School District	Bolton Central School District
Andes Central School District	Boquet Valley Central School District
Andover Central School District	Bradford Central School District
Ardsley Union Free School District	Brasher Falls Central School District
Argyle Central School District	Brentwood Union Free School District
Arkport Central School District	Brewster Central School District
Arlington Central School District	Briarcliff Manor Union Free School District
Attica Central School District	Bridgehampton Union Free School District
Auburn City School District	Brighton Central School District
AuSable Valley Central School District	Broadalbin-Perth Central School District
Averill Park Central School District	Brockport Central School District
Avoca Central School District	Brocton Central School District
Avon Central School District	Bronxville Union Free School District
Babylon Union Free School District	Brookfield Central School District
Bainbridge-Guilford Central School District	Brookhaven-Comsewogue Union Free School District
Baldwin Union Free School District	Broome-Tioga BOCES
Baldwinsville Central School District	Brunswick Central School District (Brittonkill)
Ballston Spa Central School District	Brushton-Moira Central School District
Barker Central School District	Buffalo City School District (not BOCES)
Batavia City School District	Burnt Hills-Ballston Lake Central School District
Bath Central School District	Byram Hills Central School District
Bay Shore Union Free School District	
Bayport-Blue Point Union Free School District	
Beacon City School District	



Byron-Bergen Central School District  
 Cairo-Durham Central School District  
 Caledonia-Mumford Central School District  
 Cambridge Central School District  
 Camden Central School District  
 Campbell-Savona Central School District  
 Canajoharie Central School District  
 Canandaigua City School District  
 Canaseraga Central School District  
 Canastota Central School District  
 Candor Central School District  
 Canisteo-Greenwood Central School District  
 Canton Central School District  
 Capital District/North Country  
 Carle Place Union Free School District  
 Carmel Central School District  
 Carthage Central School District  
 Cassadaga Valley Central School District  
 Cato-Meridian Central School District  
 Catskill Central School District  
 Cattaraugus-Allegany-Erie-Wyoming  
 BOCES  
 Cattaraugus-Little Valley Central School  
 District  
 Cayuga-Onondaga BOCES  
 Cazenovia Central School District  
 Center Moriches Union Free School District  
 Central Islip Union Free School District  
 Central Square Central School District  
 Central Valley Central School District at  
 Ilion-Mohawk  
 Chappaqua Central School District  
 Charlotte Valley Central School District  
 Chateaugay Central School District  
 Chatham Central School District  
 Chautauqua Lake Central School District  
 Chazy Union Free School District  
 Cheektowaga Central School District  
 Cheektowaga-Maryvale Union Free School  
 District  
 Cheektowaga-Sloan Union Free School  
 District  
 Chenango Forks Central School District  
 Chenango Valley Central School District  
 Cherry Valley-Springfield Central School  
 District

Chester Union Free School District  
 Chittenango Central School District  
 Churchville-Chili Central School District  
 Cincinnatus Central School District  
 Clarence Central School District  
 Clarkstown Central School District  
 Cleveland Hill Union Free School District  
 Clifton-Fine Central School District  
 Clinton Central School District  
 Clinton-Essex-Warren-Washington BOCES  
 Clyde-Savannah Central School District  
 Clymer Central School District  
 Cobleskill-Richmondville Central School  
 District  
 Cohoes City School District  
 Cold Spring Harbor Central School District  
 Colton-Pierrepont Central School District  
 Commack Union Free School District  
 Connetquot Central School District  
 Cooperstown Central School District  
 Copenhagen Central School District  
 Copiague Union Free School District  
 Corinth Central School District  
 Corning City School District  
 Cornwall Central School District  
 Cortland City School District  
 Coxsackie-Athens Central School District  
 Croton-Harmon Union Free School District  
 Crown Point Central School District  
 Cuba-Rushford Central School District  
 Dalton-Nunda Central School District  
 (Keshequa)  
 Dansville Central School District  
 Deer Park Union Free School District  
 Delaware Academy Central School District  
 at Delhi  
 Delaware-Chenango-Madison-Otsego  
 BOCES  
 Depew Union Free School District  
 Deposit Central School District  
 DeRuyter Central School District  
 Dobbs Ferry Union Free School District  
 Dolgeville Central School District  
 Dover Union Free School District  
 Downsville Central School District  
 Dryden Central School District



Duanesburg Central School District  
 Dundee Central School District [2]  
 Dunkirk City School District  
 Dutchess BOCES  
 East Aurora Union Free School District  
 East Bloomfield Central School District  
 East Greenbush Central School District  
 East Hampton Union Free School District  
 East Irondequoit Central School District  
 East Islip Union Free School District  
 East Meadow Union Free School District  
 East Moriches Union Free School District  
 East Quogue Union Free School District  
 East Ramapo Central School District  
 East Rochester Union Free School District  
 East Rockaway Union Free School District  
 East Syracuse Minoa Central School District  
 East Williston Union Free School District  
 Eastchester Union Free School District  
 Eastern Suffolk (Suffolk-1) BOCES  
 Eastport-South Manor Central School District  
 Eden Central School District  
 Edgemont Union Free School District  
 Edinburg Common School District  
 Edmeston Central School District  
 Edwards-Knox Central School District  
 Elba Central School District  
 Eldred Central School District  
 Ellenville Central School District  
 Ellicottville Central School District  
 Elmira City School District  
 Elmira Heights Central School District  
 Elmont Union Free School District  
 Elmsford Union Free School District  
 Elwood Union Free School District  
 Enlarged City School District of Middletown  
 Erie 1 BOCES  
 Erie 2 Chautauqua-Cattaraugus BOCES  
 Evans-Brant Central School District (Lake Shore)  
 Fabius-Pompey Central School District  
 Fairport Central School District  
 Falconer Central School District  
 Fallsburg Central School District

Farmingdale Union Free School District  
 Fayetteville-Manlius Central School District  
 Fillmore Central School District  
 Fire Island Union Free School District  
 Fishers Island Union Free School District  
 Floral Park-Bellerose Union Free School District  
 Florida Union Free School District  
 Fonda-Fultonville Central School District  
 Forestville Central School District  
 Fort Ann Central School District  
 Fort Edward Union Free School District  
 Fort Plain Central School District  
 Frankfort-Schuyler Central School District  
 Franklin Central School District  
 Franklin Square Union Free School District  
 Franklin-Essex-Hamilton BOCES  
 Franklinville Central School District  
 Fredonia Central School District  
 Freeport Union Free School District  
 Frewsburg Central School District  
 Friendship Central School District  
 Frontier Central School District  
 Fulton City School District  
 Galway Central School District  
 Gananda Central School District  
 Garden City Union Free School District  
 Garrison Union Free School District  
 Gates-Chili Central School District  
 General Brown Central School District  
 Genesee Valley BOCES  
 Genesee Valley Central School District  
 Geneseo Central School District  
 Geneva City School District  
 George Junior Republic Union Free School District  
 Georgetown-South Otselic Central School District  
 Germantown Central School District  
 Gilbertsville-Mount Upton Central School District  
 Gilboa-Conesville Central School District  
 Glen Cove City School District  
 Glens Falls City School District  
 Glens Falls Common School District  
 Gloversville City School District



Gorham-Middlesex Central School District  
 Goshen Central School District  
 Gouverneur Central School District  
 Gowanda Central School District  
 Grand Island Central School District  
 Granville Central School District  
 Great Neck Union Free School District  
 Greece Central School District  
 Green Island Union Free School District  
 Greenburgh Central School District  
 Greenburgh Eleven Union Free School District  
 Greenburgh-Graham Union Free School District  
 Greenburgh-North Castle Union Free School District  
 Greene Central School District  
 Greenport Union Free School District  
 Greenville Central School District  
 Greenwich Central School District  
 Greenwood Lake Union Free School District  
 Groton Central School District  
 Guilderland Central School District  
 Hadley-Luzerne Central School District  
 Haldane Central School District  
 Half Hollow Hills Central School District  
 Hamburg Central School District  
 Hamilton Central School District  
 Hamilton-Fulton-Montgomery BOCES  
 Hammond Central School District  
 Hammondsport Central School District  
 Hampton Bays Union Free School District  
 Hancock Central School District  
 Hannibal Central School District  
 Harborfields Central School District  
 Harpursville Central School District  
 Harrison Central School District  
 Harrisville Central School District  
 Hartford Central School District  
 Hastings-on-Hudson Union Free School District  
 Hauppauge Union Free School District  
 Haverstraw-Stony Point Central School District  
 Hawthorne-Cedar Knolls Union Free School District

Hempstead Union Free School District  
 Hendrick Hudson Central School District  
 Herkimer Central School District  
 Herkimer-Fulton-Hamilton-Otsego BOCES  
 Hermon-DeKalb Central School District  
 Herricks Union Free School District  
 Heuvelton Central School District  
 Hewlett-Woodmere Union Free School District  
 Hicksville Union Free School District  
 Highland Central School District  
 Highland Falls-Fort Montgomery Central School District  
 Hilton Central School District  
 Hinsdale Central School District  
 Holland Central School District  
 Holland Patent Central School District  
 Holley Central School District  
 Homer Central School District  
 Honeoye Central School District  
 Honeoye Falls-Lima Central School District  
 Hoosic Valley Central School District  
 Hoosick Falls Central School District (not BOCES)  
 Hopevale Union Free School District at Hamburg  
 Hornell City School District  
 Horseheads Central School District  
 Hudson City School District  
 Hudson Falls Central School District  
 Hunter-Tannersville Central School District  
 Huntington Union Free School District  
 Hyde Park Central School District  
 Indian Lake Central School District  
 Indian River Central School District  
 Inlet Common School District  
 Iroquois Central School District  
 Irvington Union Free School District  
 Island Park Union Free School District  
 Island Trees Union Free School District  
 Islip Union Free School District  
 Ithaca City School District  
 Jamestown City School District  
 Jamesville-DeWitt Central School District  
 Jasper-Troupsburg Central School District  
 Jefferson Central School District



Jefferson-Lewis-Hamilton-Herkimer-Oneida  
 BOCES  
 Jericho Union Free School District  
 Johnsbury Central School District  
 Johnson City Central School District  
 Johnstown City School District  
 Jordan-Elbridge Central School District  
 Katonah-Lewisboro Union Free School  
 District  
 Keene Central School District  
 Kendall Central School District  
 Kenmore-Town of Tonawanda School  
 District  
 Kinderhook Central School District  
 Kings Park Central School District  
 Kingston City School District  
 Kiryas Joel Village Union Free School  
 District  
 La Fargeville Central School District  
 Lackawanna City School District  
 LaFayette Central School District  
 Lake George Central School District  
 Lake Placid Central School District  
 Lake Pleasant Central School District  
 Lakeland Central School District  
 Lancaster Central School District  
 Lansing Central School District  
 Lansingburgh Central School District  
 Laurens Central School District  
 Lawrence Union Free School District  
 Le Roy Central School District  
 Letchworth Central School District  
 Levittown Union Free School District  
 Lewiston-Porter Central School District  
 Liberty Central School District  
 Lindenhurst Union Free School District  
 Lisbon Central School District  
 Little Falls City School District  
 Little Flower Union Free School District  
 Liverpool Central School District  
 Livingston Manor Central School District  
 Livonia Central School District  
 Lockport City School District  
 Locust Valley Central School District  
 Long Beach City School District  
 Long Lake Central School District

Longwood Central School District  
 Lowville Academy & Central School  
 District  
 Lyme Central School District  
 Lynbrook Union Free School District  
 Lyncourt Union Free School District  
 Lyndonville Central School District  
 Lyons Central School District  
 Madison Central School District  
 Madison-Oneida BOCES  
 Madrid-Waddington Central School District  
 Mahopac Central School District  
 Maine-Endwell Central School District  
 Malone Central School District  
 Malverne Union Free School District  
 Mamaroneck Union Free School District  
 (not BOCES)  
 Manchester-Shortsville Central School  
 District (Red Jacket)  
 Manhasset Union Free School District  
 Marathon Central School District  
 Marcellus Central School District  
 Margaretville Central School District  
 Marion Central School District [3]  
 Marlboro Central School District  
 Massapequa Union Free School District  
 Massena Central School District  
 Mattituck-Cutchogue Union Free School  
 District  
 Mayfield Central School District  
 McGraw Central School District  
 Mechanicville City School District  
 Medina Central School District  
 Menands Union Free School District  
 Merrick Union Free School District  
 Mexico Central School District  
 Middle Country Central School District  
 Middleburgh Central School District  
 Milford Central School District  
 Millbrook Central School District  
 Miller Place Union Free School District  
 Mineola Union Free School District  
 Minerva Central School District  
 Minisink Valley Central School District  
 Monroe 1 BOCES  
 Monroe 2 – Orleans BOCES



Monroe-Woodbury Central School District  
 Montauk Union Free School District  
 Monticello Central School District  
 Moravia Central School District  
 Moriah Central School District  
 Morris Central School District  
 Morristown Central School District  
 Morrisville-Eaton Central School District  
 Mount Markham Central School District  
 Mount Morris Central School District  
 Mount Pleasant Central School District  
 Mount Pleasant-Blythedale Union Free School District  
 Mount Pleasant-Cottage Union Free School District  
 Mount Sinai Union Free School District  
 Mount Vernon School District  
 Nanuet Union Free School District  
 Naples Central School District  
 New Hartford Central School District  
 New Hyde Park-Garden City Park Union Free School District  
 New Lebanon Central School District  
 New Paltz Central School District  
 New Rochelle City School District  
 New Suffolk Common School District  
 New York City School District  
 New York Mills Union Free School District  
 Newark Central School District  
 Newark Valley Central School District  
 Newburgh City School District (not BOCES)  
 Newcomb Central School District  
 Newfane Central School District  
 Newfield Central School District  
 Niagara Falls City School District  
 Niagara-Wheatfield Central School District  
 Niskayuna Central School District  
 North Babylon Union Free School District  
 North Bellmore Union Free School District  
 North Collins Central School District  
 North Colonie Central School District  
 North Greenbush Common School District (Williams)  
 North Merrick Union Free School District  
 North Rose-Wolcott Central School District

North Salem Central School District  
 North Shore Central School District  
 North Syracuse Central School District  
 North Tonawanda City School District  
 North Warren Central School District  
 Northeast Central School District  
 Northeastern Clinton Central School District  
 Northern Adirondack Central School District  
 Northport-East Northport Union Free School District  
 Northville Central School District  
 Norwich City School District  
 Norwood-Norfolk Central School District  
 Nyack Union Free School District  
 Oakfield-Alabama Central School District  
 Oceanside Union Free School District  
 Odessa-Montour Central School District  
 Ogdensburg City School District  
 Olean City School District  
 Oneida City School District  
 Oneida-Herkimer-Madison BOCES  
 Oneonta City School District  
 Onondaga Central School District  
 Onondaga-Cortland-Madison BOCES  
 Ontario-Seneca-Yates-Cayuga-Wayne BOCES  
 Onteora Central School District  
 Oppenheim-Ephratah-St. Johnsville Central School District  
 Orange-Ulster BOCES  
 Orchard Park Central School District  
 Oriskany Central School District  
 Orleans-Niagara BOCES  
 Ossining Union Free School District  
 Oswego BOCES  
 Oswego City School District  
 Otego-Unadilla Central School District  
 Otsego-Delaware-Schoharie-Greene BOCES  
 Owego-Apalachin Central School District  
 Oxford Academy and Central School District  
 Oyster Bay-East Norwich Central School District  
 Oysterponds Union Free School District



Palmyra-Macedon Central School District  
 Panama Central School District  
 Parishville-Hopkinton Central School District  
 Patchogue-Medford Union Free School District  
 Pavilion Central School District  
 Pawling Central School District  
 Pearl River Union Free School District  
 Peekskill City School District  
 Pelham Union Free School District  
 Pembroke Central School District  
 Penfield Central School District  
 Penn Yan Central School District  
 Perry Central School District  
 Peru Central School District  
 Phelps-Clifton Springs Central School District  
 Phoenix Central School District  
 Pine Bush Central School District  
 Pine Plains Central School District  
 Pine Valley Central School District (South Dayton)  
 Piseco Common School District  
 Pittsford Central School District  
 Plainedge Union Free School District  
 Plainview-Old Bethpage Central School District  
 Plattsburgh City School District  
 Pleasantville Union Free School District  
 Pocantico Hills Central School District  
 Poland Central School District  
 Port Byron Central School District  
 Port Chester-Rye Union Free School District  
 Port Jefferson Union Free School District  
 Port Jervis City School District  
 Port Washington Union Free School District  
 Portville Central School District  
 Potsdam Central School District  
 Poughkeepsie City School District  
 Prattsburgh Central School District  
 Pulaski Central School District  
 Putnam Central School District  
 Putnam Valley Central School District  
 Putnam-Westchester BOCES  
 Queensbury Union Free School District

Quogue Union Free School District  
 Randolph Academy Union Free School District  
 Randolph Central School District  
 Raquette Lake Union Free School District  
 Ravena-Coeymans-Selkirk Central School District  
 Red Creek Central School District  
 Red Hook Central School District  
 Remsen Central School District  
 Remsenburg-Speonk Union Free School District  
 Rensselaer City School District  
 Rensselaer-Columbia-Greene BOCES  
 Rhinebeck Central School District  
 Richfield Springs Central School District  
 Ripley Central School District  
 Riverhead Central School District  
 Rochester City School District (not BOCES)  
 Rockland BOCES  
 Rockville Centre Union Free School District  
 Rocky Point Union Free School District  
 Rome City School District  
 Romulus Central School District  
 Rondout Valley Central School District  
 Roosevelt Union Free School District  
 Roscoe Central School District  
 Roslyn Union Free School District  
 Rotterdam-Mohonasen Central School District  
 Roxbury Central School District  
 Royalton-Hartland Central School District  
 Rush-Henrietta Central School District  
 Rye City School District  
 Rye Neck Union Free School District  
 Sachem Central School District  
 Sackets Harbor Central School District  
 Sag Harbor Union Free School District  
 Sagaponack Common School District  
 Saint Regis Falls Central School District  
 Salamanca City School District  
 Salem Central School District  
 Salmon River Central School District  
 Sandy Creek Central School District  
 Saranac Central School District  
 Saranac Lake Central School District



Saugerties Central School District  
 Sauquoit Valley Central School District  
 Sayville Union Free School District  
 Scarsdale Union Free School District  
 Schalmont Central School District  
 Schenectady City School District  
 Schenevus Central School District  
 Schodack Central School District  
 Schoharie Central School District  
 Schroon Lake Central School District  
 Schuyler-Steuben-Chemung-Tioga-Allegany  
 BOCES  
 Schuylerville Central School District  
 Scio Central School District  
 Scotia-Glenville Central School District  
 Seaford Union Free School District  
 Seneca Falls Central School District  
 Sewanhaka Central High School District  
 Sharon Springs Central School District  
 Shelter Island Union Free School District  
 Shenendehowa Central School District  
 Sherburne-Earlville Central School District  
 Sherman Central School District  
 Shoreham-Wading River Central School  
 District  
 Sidney Central School District  
 Silver Creek Central School District  
 Skaneateles Central School District  
 Smithtown Central School District  
 Sodus Central School District  
 Solvay Union Free School District  
 Somers Central School District  
 South Colonie Central School District  
 South Country Central School District  
 South Glens Falls Central School District  
 South Huntington Union Free School  
 District  
 South Jefferson Central School District  
 South Kortright Central School District  
 South Lewis Central School District  
 South Mountain-Hickory Common School  
 District  
 South Orangetown Central School District  
 South Seneca Central School District  
 South Seneca Central School District  
 Southampton Union Free School District

Southern Cayuga Central School District  
 Southold Union Free School District  
 Southwestern Central School District at  
 Jamestown  
 Spackenkill Union Free School District  
 Spencerport Central School District  
 Spencer-Van Etten Central School District  
 Springs Union Free School District  
 Springville-Griffith Institute Central School  
 District  
 St. Lawrence-Lewis BOCES  
 Stamford Central School District  
 Starpoint Central School District  
 Stillwater Central School District  
 Stockbridge Valley Central School District  
 Suffern Central School District  
 Sullivan BOCES  
 Sullivan West Central School District  
 Susquehanna Valley Central School District  
 Sweet Home Central School District  
 Syosset Central School District  
 Syracuse City School District (not BOCES)  
 Taconic Hills Central School District  
 Tech Valley High School (Consortium)  
 The Enlarged City School District of the  
 City of Saratoga Springs  
 Thousand Islands Central School District  
 Three Village Central School District  
 Ticonderoga Central School District  
 Tioga Central School District  
 Tompkins-Seneca-Tioga BOCES  
 Tonawanda City School District  
 Town of Webb Union Free School District  
 Tri-Valley Central School District  
 Troy City School District  
 Trumansburg Central School District  
 Tuckahoe Common School District  
 Tuckahoe Union Free School District  
 Tully Central School District  
 Tupper Lake Central School District  
 Tuxedo Union Free School District  
 Ulster BOCES  
 Unadilla Valley Central School District  
 Union Free School District of the  
 Tarrytowns  
 Union Springs Central School District



Uniondale Union Free School District  
 Union-Endicott Central School District  
 Utica City School District  
 Valhalla Union Free School District  
 Valley Central School District  
 Valley Stream 13 Union Free School District  
 Valley Stream 24 Union Free School District  
 Valley Stream 30 Union Free School District  
 Valley Stream Central High School District  
 Van Hornesville-Owen D. Young Central School District  
 Vernon-Verona-Sherrill Central School District  
 Vestal Central School District  
 Victor Central School District  
 Voorheesville Central School District  
 Wainscott Common School District  
 Wallkill Central School District  
 Walton Central School District  
 Wantagh Union Free School District  
 Wappingers Central School District  
 Warrensburg Central School District  
 Warsaw Central School District  
 Warwick Valley Central School District  
 Washington-Saratoga-Warren-Hamilton-Essex BOCES  
 Washingtonville Central School District  
 Waterford-Halfmoon Union Free School District  
 Waterloo Central School District  
 Watertown City School District  
 Waterville Central School District  
 Watervliet City School District  
 Watkins Glen Central School District  
 Waverly Central School District  
 Wayland-Cohocton Central School District  
 Wayne Central School District  
 Wayne-Finger Lakes RIC  
 Webster Central School District  
 Weedsport Central School District

Wells Central School District  
 Wellsville Central School District  
 West Babylon Union Free School District  
 West Canada Valley Central School District  
 West Genesee Central School District  
 West Hempstead Union Free School District  
 West Irondequoit Central School District  
 West Islip Union Free School District  
 West Park Union Free School District  
 West Seneca Central School District  
 West Valley Central School District  
 Westbury Union Free School District  
 Westchester (Southern Westchester) BOCES  
 Western Suffolk (Suffolk-2) BOCES  
 Westfield Central School District  
 Westhampton Beach Union Free School District  
 Westhill Central School District  
 Westmoreland Central School District  
 Wheatland-Chili Central School District  
 Wheelerville Union Free School District  
 White Plains City School District  
 Whitehall Central School District  
 Whitesboro Central School District  
 Whitesville Central School District  
 Whitney Point Central School District  
 William Floyd Union Free School District  
 Williamson Central School District  
 Williamsville Central School District  
 Willsboro Central School District  
 Wilson Central School District  
 Windham-Ashland-Jewett Central School District  
 Windsor Central School District  
 Worcester Central School District  
 Wyandanch Union Free School District  
 Wynantskill Union Free School District  
 Wyoming Central School District  
 Yonkers City School District (not BOCES)  
 York Central School District  
 Yorkshire-Pioneer Central School District  
 Yorktown Central School District



**APPENDIX B**  
**COUNTIES OF NEW YORK STATE**

Albany	New York / Manhattan (part of
Allegany	New York City)
Bronx (part of New York City)	Niagara
Broome	Oneida
Cattaraugus	Onondaga
Cayuga	Ontario
Chautauqua	Orange
Chemung	Orleans
Chenango	Oswego
Clinton	Otsego
Columbia	Putnam
Cortland	Queens (part of New York City)
Delaware	Rensselaer
Dutchess	Richmond / Staten Island (part of
Erie	New York City)
Essex	Rockland
Franklin	St. Lawrence
Fulton	Saratoga
Genesee	Schenectady
Greene	Schoharie
Hamilton	Schuyler
Herkimer	Seneca
Jefferson	Steuben
Kings / Brooklyn (part of New	Suffolk
York City)	Sullivan
Lewis	Tioga
Livingston	Tompkins
Madison	Ulster
Monroe	Warren
Montgomery	Washington
Nassau	Wayne
	Westchester
	Wyoming
	Yates